

TOWN OF LINCOLN

Eau Claire County

ORDINANCE NO: 20-003 CHAPTER 12 – PUBLIC SAFETY ARTICLE – FIREWORKS

SECTION 12.1 TITLE

This ordinance shall be known as the Fireworks Ordinance of the Town of Lincoln.

SECTION 12.2 STATE STATUTES ADOPTED - AUTHORITY

The Town Board of the Town of Lincoln is granted authority for adopting this ordinance under Wis. Stats §60.22 and §167.10. These statutes are hereby incorporated by reference as published by the most recent revision of the Wisconsin Statutes. Any amendments, which are from time to time made in the statutes, shall automatically be made in this ordinance. In the case of any conflict between Wis. Stat. §167.10 and this Ordinance, whichever provision is more strict shall apply.

SECTION 12.3 PURPOSE

This ordinance purpose is to regulate the usage of fireworks within the Town of Lincoln.

SECTION 12.4 DEFINITIONS

In this section, "Fireworks" means anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include any of the following:

- A. Fuel or lubricant.
- B. A firearm cartridge or shotgun shell.
- C. A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft or motor vehicle.
- D. A match, cigarette lighter, stove, furnace, candle, lantern, or space heater.
- E. A cap containing not more than one-quarter grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.
- F. A toy snake which contains no mercury.
- G. A model rocket engine.
- H. Tobacco and a tobacco product.
- I. A sparkler on a wire or wood stick not exceeding 36 inches in length that is designed to produce audible or visible effects or to produce audible and visible effects.
- J. A device designed to spray out paper confetti or streamers and which contains less than one-quarter grain of explosive mixture.
- K. A fuse-less device that is designed to produce audible or visible effects or audible and visible effects, and that contains less than one-quarter grain of explosive mixture.
- L. A device that is designed primarily to burn pyrotechnic smoke-producing mixtures, at a controlled rate, and that produces audible or visible effects, or audible and visible effects.

- M. A cylindrical fountain that consists of one or more tubes and that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.
- N. A cone fountain that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.
- O. A novelty device that spins or moves on the ground.

SECTION 12.5 PERMIT REQUIRED

- A. No person may possess or use Fireworks without first having secured a user's permit from the Town Chairperson or from a person designated by the Town Chairperson.
- B. A permit under this section may be issued only to:
 - 1. A public authority
 - 2. A fair association
 - 3. An amusement park
 - 4. A park board
 - 5. A civic organization
 - 6. Any individual or group of individuals; or
 - 7. An agricultural producer for the protection of crops from predatory birds or animals.
- C. The Town Chair or the designee shall not issue a permit for the use of Fireworks until the applicant has executed an application containing the following:
 - 1. The name, address, and phone number of the permit holder.
 - 2. The date on or after which fireworks may be purchased.
 - 3. The general kind and approximate quantity of fireworks which may be purchased.
 - 4. The date, time, and location of intended discharge of Fireworks.
 - 5. Purpose of event (if any)
 - 6. Execution of an indemnity agreement in favor of the Town indemnifying the Town for any damages arising from applicant's possession or use of the Fireworks in the following language:
 - a. "The undersigned hereby indemnifies and holds harmless the Town of Lincoln, its officers, agents and employees from any and all claims, damages, costs or expenses including reasonable attorney's fees, costs, claims, damages or expenses which arise, directly or indirectly, from or because of the use or display of Fireworks in the Town of Lincoln by the undersigned, by any person under the control of the undersigned, by any person operating with permission of the undersigned or by any person obtaining Fireworks previously in possession of the undersigned pursuant to the permit applied for by any means whatsoever."
- D. A copy of every permit issued under this Ordinance shall be delivered by the person who obtained the permit to the Eau Claire County Sherriff's Department and the Fall Creek Area Fire Department at least 48 hours before the permit allows the discharge of fireworks.
- E. The Fire Chief of the Township Fire Department may cancel any permit issued under this ordinance if, in the Chief's sole discretion, the use of Fireworks as authorized by the permit poses an unusual fire hazard. The issuance, by the Fire Chief or the Wisconsin Department of Natural

Resources, of a general burning ban covering the site described in the permit and effective on the date of the permit shall automatically void any previously issued permit.

- F. Permits Issued in Higher Population Density Areas of the Town
 - a. At the discretion of the Town Chairman or designee, before the issuance of a permit, written notification of property owners within 200 yards of said permitted property may be required of the applicant. A list of all property owners notified shall be filed with the application in the office of the clerk. Said list must be certified by the applicant.
 - b. At the discretion of the Town Chairman or designee, before the issuance of a permit, the applicant may be required to show proof of homeowner's liability insurance or an indemnity bond with good and sufficient sureties for the payment of all claims that may arise by reason of injuries to person or property from the handling, use or discharge of Fireworks under the permit. Any bond or policy shall be in the minimum amount of (\$1,000,000) one million dollars for any one person. A copy of the bond or liability policy shall be filed with the application in the office of the clerk.
- G. A person issued a Fireworks permit for the use of crop protection from predatory birds and animals shall erect appropriate warning signs disclosing the use of Fireworks for crop protection.
- H. No Fireworks shall be discharged other than on the date for which the permit is issued and not prior to sunset nor after 11:00pm on the date, except as provided in Section 12.5(G).
- I. A person issued a Fireworks permit from the Town of Lincoln must also comply with all requirements of Wis. Stats. §167.10.
- J. Any application for Fireworks permit shall be accompanied by the fee established in the Town of Lincoln Fee and License Schedule.

Section 12.6 Fireworks on Town Property

No Firework shall be discharged on town property without the following items being filed in the office of the clerk prior to the permitted event:

- A. A user's permit issued by the Town of Lincoln Town Chairperson or from a person designated by the Town Chairperson to issue said permits.
- B. A copy of the user's ATF Type 54 Fireworks License which licenses the user to purchase, possess, transport and discharge Division 1.3 explosives.
- C. A copy of proof of the completion of a Fireworks Display Safety Course.
- D. An indemnity bond with good and sufficient sureties or policy of liability insurance for the payment of all claims that may arise by reason of injuries to person or property from the handling, use or discharge of fireworks under the permit. The bond or policy shall be taken in the name of the city, village or town wherein the fireworks are to be used, and any person injured thereby may bring an action on the bond or policy in the person's own name to recover the damage the person has sustained, but the aggregate liability of the surety or insurer to all persons shall not exceed the amount of the bond or policy. Any bond or policy shall be in the minimum amount of (\$1,000,000) one million dollars for any one person.

Section 12.7 Parental Liability

A parent, foster parent, family-operated group home parent, or legal guardian of a minor who consents to the use of Fireworks by the minor is liable for damages caused by the minor’s use of the fireworks.

Section 12.8 Penalties

Any permit holder who falsifies any information of any permit application or who uses or discharges fireworks contrary to the terms and provision of the permit or any person possessing or using fireworks without a permit, shall forfeit to the town upon conviction thereof, not less than one hundred dollars (\$100.00) and no more than five hundred dollars (\$500.00) plus the cost of prosecution.

Section 12.9 Severability and Interpretation

- A. Should any section, clause, provision or portion of this ordinance be adjudged unconstitutional or invalid, unlawful or unenforceable by a final order of a court of competent jurisdiction, including all applicable appeals, the remainder of this ordinance shall remain in full force and effect.
- B. The provisions of this ordinance shall be liberally construed in favor of the Town shall not be construed to be a limitation or repeal of any other power now possessed or granted to the Town.

Section 12.10 No Liability for Damages

This ordinance shall not be construed as an assumption of liability by the Town of Lincoln for damages because of injuries sustained or property destroyed by any person's failure to comply with the requirements set forth herein.

Section 12.11 Effective date

This ordinance shall take effect upon passage and publication by law.

Passed this 9th day of March, 2020. +

Town Board, Town of Lincoln

Robert Dewitz
Robert Dewitz, Town Chairman

Dean Klingbeil
Dean Klingbeil, Town Supervisor

Matt Krenz
Matt Krenz, Town Supervisor

Attested Kathleen Dehnke, Clerk
Kathleen Dehnke, Clerk